

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Kim Murphy,)
)
Plaintiff-Petitioner,)
Counter-Defendant,)
vs.)
)
Richland Lexington School District No. 5,)
by and through its Board of Trustees by)
and through Counsel to the Board of)
Trustees,)
)
Defendant-Respondent,)
Counter-Plaintiff.)

C.A. No. 2013-CP-40-1897

**RESPONSE/ANSWER
TO VERIFIED PETITION,
AFFIRMATIVE DEFENSES
AND COUNTERCLAIMS**

RICHLAND COUNTY
FILED
2013 APR 24 AM 11:39
JANETTE W. McBRIDE
C.C.P. & G.S.

Respondent, School District Five of Lexington and Richland Counties ("District") hereby responds to the allegations of Petitioner's Verified Petition according to the numbered paragraphs thereof as follows:

1. Denied, except that the Respondent admits only it removed Petitioner from the Board pursuant to its statutory authority under S.C. Code § 59-19-60.
2. Denied.
3. Denied.
4. This allegation asserts a legal conclusion and no response is required of Respondent. To the extent a response is required, it is denied.
5. This allegation asserts a legal conclusion and no response is required of Respondent. To the extent a response is required, it is denied.
6. Denied.
7. Denied.
8. Denied.
9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied. The proceeding before the School District Five of Lexington and Richland Counties, Board of Trustees ("Board") was the applicable administrative procedure.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied, except it is admitted that motions providing for both Petitioner's removal and for sustaining her membership on the Board were prepared in advance of the hearing on March 19, 2013.

31. Admitted; the Board Chair also had prepared a statement on Petitioner's membership on the Board being sustained, in the event the Board voted to sustain her membership on the Board.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. This allegation asserts a legal conclusion and no response is required of Respondent. To the extent a response is required, it is denied.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

Affirmative Defenses

43. Unclean Hands

Murphy should be denied any alleged equitable relief pursuant to the equitable doctrine of unclean hands.

44. Laches

Murphy should be denied any alleged equitable relief pursuant to the equitable doctrine of laches because Murphy failed to act in a timely manner to protect her rights to the prejudice of the Respondent.

Wherefore, having responded to Petitioner's allegations, the Respondent respectfully contends the decision to remove Petitioner from the Board should be affirmed and the appeal dismissed.

Counter-claims

The above-named Counter-Plaintiff, complaining of Plaintiff-Petitioner, alleges as follows:

Parties

45. The School District Five of Lexington and Richland Counties ("District") is a school district and political subdivision of the State of South Carolina established and operating under the laws of the State of South Carolina, with its principal place of business at 1020 Dutch Fork Road, Irmo, Richland County, South Carolina.

46. The District is governed by the School District Five of Lexington and Richland Counties, Board of Trustees ("Board").

47. Counter-Defendant, Kim Murphy ("Murphy") is a citizen and resident of Lexington County, South Carolina, residing at 154 Old Laurel Lane Chapin, Lexington County, South Carolina, where Murphy has resided from at least November, 2010 until the present.

48. In November 2010, Murphy was elected to a position on the Board reserved for residents of Richland County under Act 326 of 2002.

Jurisdiction and Venue

49. The Court has jurisdiction over the claims in this civil action under article V, § 11 of the South Carolina Constitution, and South Carolina Code § 14-5-350, §15-53-10, et seq., and § 15-63-10, et seq.

50. Venue is proper in this Circuit under South Carolina Code §15-7-30 because Richland County is where the most substantial part of the alleged acts or omissions giving rise to the causes of action occurred.

For a First Cause of Action
Declaratory Judgment – S.C. Code § 15-53-10, et seq.

51. On March 19, 2013, by motion and order of the Board, the Board removed Murphy from her position on the Board pursuant to South Carolina Code § 59-19-60 and Act 326 of 2002.

52. A justiciable controversy currently exists between the District and Murphy concerning Murphy's qualification to hold the public office or position of Board member under the requirements of Act 326 of 2002.

53. Pursuant to S. C. Code § 15-53-10, et seq., the District is entitled to a declaration that Murphy is: a) not a resident of Richland County; and b) not qualified to hold the public office or position of Board member to which she was elected in November 2010 under Act 326 of 2002.

54. The District is further entitled to a declaration that the public office or position of Board member, to which Murphy was elected in November 2010, is vacant.

For a Second Cause of Action
Quo Warranto – S.C. Code § 15-63-10, et seq.

55. The District re-alleges herein each of the allegations set forth in paragraphs 45 through 50.

56. Murphy unlawfully held, seeks to hold, or exercise the public office of Board member.

57. Murphy's failure to reside in Richland County, as required by Act 326 of 2002 in order to hold or exercise the public office of Board member to which she was elected in November 2010, constitutes an unlawful usurpation and forfeiture of the office of Board member.

58. The District is an interested party and prays the Court for leave to prosecute an action against Murphy under South Carolina Code of Laws § 15-63-60(1).

59. The District is entitled to a judgment excluding Murphy from the public office of Board member.

For a Third Cause of Action
Breach of Fiduciary Duty

60. The District re-alleges herein each of the allegations set forth in paragraphs 45 to 50.

61. As a Board member, Murphy owed a fiduciary duty to the Board and District.

62. As a fiduciary, Murphy was required to act in good faith and with due regard to the interests of the Board and District.

63. It is in the District's interests that the Board fulfills its statutory duties and that Board members comply with Board policies. Under the South Carolina law, the Board has a statutory duty to manage and control the District. The Board's statutory duties include providing schoolhouses and controlling school property of the District. These statutory duties are given to the Board as a whole, and not to any individual Board member.

64. To ensure Board members act ethically and in the best interests of the District in fulfilling their duties, the Board's code of ethics requires its members to: represent at all times the entire school district; refuse to play politics in either the traditional partisan or any

petty sense; recognize that authority rests only with the Board in official meetings and that the individual Board member has no legal authority or status to bind the Board outside of such meetings; and respect the opinion of others and graciously conform to the principle of majority rule.

65. The Board is responsible to the community it serves and represents, and it is the duty of the Board to carry out the will of the community in matters of public education.

66. In 2008, the electors of the District approved a bond referendum pursuant to S.C. Constitution Art. X, § 15, authorizing the District to finance school renovation and expansion projects authorized by the Board at various schools, including Chapin High School.

67. The Board, as a whole and on behalf of the District, pursued the necessary construction permits with the South Carolina Department of Health and Environmental Control ("DHEC").

68. Murphy filed and/or maintained administrative and legal challenges to decisions and actions of the Board in furtherance of the school renovation and expansion projects in support of her own personal and political interests and in opposition to the interests of the District. Murphy breached her fiduciary duty to the Board and the District by taking these and other actions against the District and its interests in an effort to advance her own personal and political interests, including but not limited to:

- a. Murphy filed challenges against DHEC's issuance of the necessary school construction permits based on her political agenda and in direct opposition to the obligations, desire, and interests of the District, the Board, and the community.

69. As a direct and proximate cause of Murphy's actions in violation of her fiduciary duty to the District, the District's school renovation and construction program was delayed costing the District in excess of Ten Million dollars (\$10,000,000), and other damages.

For a Fourth Cause of Action
Abuse of Process

70. The District re-alleges herein each of the allegations set forth in paragraphs 45 to 50.

71. Prior to running for the Board in 2010, Murphy worked as an advocate, personally opposed, and eventually ran her Board election campaign asserting her opposition to the District's 2008 bond referendum to finance school renovations and construction.

72. Despite Murphy's extensive opposition to the 2008 bond referendum, the electors of the District passed the referendum in November, 2008.

73. As part of District's planning and through the funding authorized by District citizens, Chapin High School was to be renovated and expanded. These renovations and expansions would include, but not be limited to, expanding the school's wastewater collection system, providing for more classrooms and larger hallway spaces so that more than twenty (20) portable classrooms could be eliminated, improving school security and safety, providing for an expansion of athletic facilities including practice fields, improving and increasing student parking and adding an access road.

74. The District applied for and sought all necessary state certifications, permits and federal permits needed for the construction of the renovations and expansions to Chapin High School.

75. As part of preparation for renovating and expanding Chapin High School, the District obtained a May 6, 2010 decision from DHEC issuing a 401 Water Quality Certification ("401 Certification") to the District. The 401 Certification authorized the placement of fill material in five hundred fifty-three (553) linear feet of jurisdictional intermittent stream

and one hundred seventy-four (174) linear feet of jurisdictional perennial stream ("Subject Stream").

76. Murphy first opposed the District' application for the 401 Certification on December 16, 2009.

77. At the time Murphy began opposing the District's implementation of the 2008 referendum projects by attacking the necessary permitting for the Chapin High School project, on information and belief, Murphy had personally never visited the Subject Stream.

78. Murphy filed her appeal to the May 6, 2008 decision of DHEC to issue a 401 Certification to the District on July 13, 2010.

79. On information and belief, Murphy did not personally visit the Subject Stream until after her filed appeal.

80. On information and belief, in furtherance of her political objectives and to gain favor with political supporters, Murphy filed her appeal with DHEC less than a month before she again filed to run for the Board on August 16, 2010.

81. In November 2010, Murphy was elected to the Board.

82. On March 11, 2011, as a sitting Board member, Murphy filed a new action in the Administrative Law Court appealing the decision of DHEC to issue a Wastewater Construction Permit related to the same renovations and expansion at Chapin High School.

83. Upon information and belief, Murphy appealed the 401 Certification and the Wastewater Construction permit not because she suffered or was in imminent danger of suffering a personal injury in fact, but for an ulterior purpose.

84. Murphy filed the appeal of the 401 Certification and the Wastewater Construction Permit because she opposed the 2008 referendum approved by the electors of the District and the projects authorized by the Board, and her efforts were in furtherance of slowing or stopping the implementation of the referendum projects for her political gain and that of her

political supporters. Further, Murphy's actions related to this Chapin High School project are consistent with her obstruction of other District projects.

85. Murphy's appeals, and any such appeals in furtherance of stopping the implementation of the projects financed through the 2008 referendum, could not properly be maintained in her capacity as a sitting Board member.

86. Murphy's actions were based on the political objectives of a defeated advocate and amount to an attack on the elected body that she served, the District and its Board.

87. Murphy's appeals of the 401 Certification and Wastewater Construction Permit are willful acts of using a lawful process of appeal for an ulterior purpose.

88. Murphy's appeals of the 401 Certification and Wastewater Construction Permit were not proper in the regular conduct of the proceedings, but were filed under the guise that she was an aggrieved landowner who would suffer harm if the District plan was undertaken when her true objective was not a legitimate use of the process.

89. Murphy's appeal of the 401 Certification and Wastewater Construction Permit was a misuse of legal process to accomplish her political objective unrelated to the Subject Stream.

90. Murphy's objective, among other politically motivated reasons, was to slow, obstruct or stop the District's implementation of the 2008 referendum for the purpose of placating her political allies.

91. Defendant's actions have caused and will cause future damages and injury to the District in an amount exceeding Ten Million dollars (\$10,000,000).

Prayer for Relief

WHEREFORE, the District prays for the following relief against Murphy:

1. A declaration and judgment that Murphy is not a resident of Richland County;
2. A declaration and judgment that Murphy is not qualified to hold the public office or position of Board member to which she was elected in November 2010 under Act 326 of 2002;
3. A declaration and judgment that the seat on the Board to which Murphy was elected in 2010 is vacant;
4. A judgment excluding Murphy from the public office or position of Board member for Richland County;
5. A judgment for actual damages against Murphy in an amount exceeding Ten Million dollars (\$10,000,000).
6. A judgment for costs and such other relief as the Court deems just and proper considering the facts of this case.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

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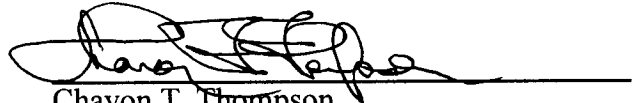
April 22, 2013

Columbia, South Carolina

CERTIFICATE OF SERVICE BY MAIL

The undersigned of Childs & Halligan, P.A., hereby certifies that she has served the following counsel of record with the foregoing **Response/Answer to Verified Petition Affirmative Defenses and Counterclaims and Certified Record** by mailing a copy of same postage prepaid and return address clearly indicated, to the following on this 22nd day of April 2013:

J. Todd Kincannon, Esq.
The Kincannon Firm
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Columbia, SC 29202


Chavon T. Thompson

RICHLAND COUNTY
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